IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO.9883 OF 2002

TO

SPECIAL CIVIL APPLICATION NO.9896 OF 2002

WITH

SPECIAL CIVIL APPLICATION NO.7475 to 7478 of 2002

WITH

SPECIAL CIVIL APPLICATION NO.7480 to 7482 of 2002

WITH

SPECIAL CIVIL APPLICATION NO.7484 to 7486 of 2002

WITH

SPECIAL CIVIL APPLICATION NO.7466 to 7474 of 2002

For Approval and Signature:

HON'BLE MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

B.K. CHAUHAN

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 9883 of 2002

MR MB GANDHI for Petitioner No. 1

MR AD OZA GOVT PLEADER for Respondent No. 1-2

MR JB PARDIWALA for Respondent No. 3

LAW OFFICER BRANCH for Respondent No. 3 with

2. Special Civil Application No. 7466 of 2002

MR MB GANDHI for Petitioner No. 1

MR AD OZA GOVERNMENT PLEADER for Respondent No. 1

and above referred numbers.

CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 11/12/2003

COMMON ORAL JUDGEMENT

1. Heard learned advocate Mr.M.B.Gandhi on behalf of the petitioners and the learned Government Pleader Mr.A.D.Oza, appearing on behalf of the respondent Nos.1 & 2 - State Authority and learned advocate Mr.J.B.Pardiwala for respondent No.3.

2. The bailiffs working in the Small Causes Court, Ahmedabad as well as in District Court, Ahmedabad have filed the present group of petitions challenging the action of the respondents against withdrawal of the higher grade which has been granted in their favour on the basis of the Government Resolution dated 16th August, 1994.

3. The grievance of the petitioners is that they are working in the post of Bailiff and initially, Pay Revision Rules of 1987, the scale of Rs.950-1400/- has been given to the post of Bailiff with effect from 1.1.1986 and first higher grade has been fixed in the scale of Rs.1200 - 1800. Thereafter, in Pay Revision Rules of 1998 having effect from 1.1.1996, the scale has been given to the post of Bailiff Rs.3050 - 4590 and the first higher grade has been fixed in the scale of Rs.4000 6000/- with effect from 1.1.1996. But the respondents have initially granted higher grade in the scale of Rs.4000-6000/- but subsequently, the said higher grade has been withdrawn by the respondents and the higher grade has been given in the scale of Rs.3050 4590. The said benefit has been withdrawn in respect of the Bailiff working in the District Court, Ahmedabad with effect from 1.5.2000 and not withdrawn in respect of Bailiffs working in Small Causes Court, Ahmedabad. According to the

petitioners, they are entitled to higher grade in the scale of Rs.4000-6000 and withdrawal is illegal and contrary to the principles of natural justice because before withdrawal of the higher grade, as such, no reasonable opportunity whatsoever has been given by the respondents to the petitioners. Therefore, learned advocate Mr.M.B.Gandhi has submitted that the said action and the order of the respondents are contrary to the principles of natural justice and it is settled that if any adverse order having civil consequences, reasonable opportunity must be given to the concerned employees before passing the adverse orders against the concerned employees. Learned advocate Mr.Gandhi has relied upon the decision in respect of the similar question in case of RATILALBHAI NANJIBHAI GAMI VS. STATE OF GUJARAT AND OTHERS reported in 1997 [4] GCD 709. The relevant observations made in para-5 of the aforesaid decision are referred to as under :

"5. I do not consider it to be appropriate to go on the larger issued raised by the learned counsel for the petitioners that in case the qualifications as prescribed for promotion have been adhered to as the condition precedent for eligibility and entitlement for the benefit of higher pay scale, then many of the petitioners will not get any benefit and they will retire from the very pay scale on which they have been appointed. The effect of these orders is reduction of pay scale of the petitioners as well as consequential reduction in their emoluments. The petitioners have also been retired from the services and as such, this order will have further serious repercussions of reduction of their pension and other amount of retirementary benefits. Though orders may be administrative orders and it may be the case of correction of mistake made by respondents, as alleged in the reply to the Special Civil Application and projected during the course of arguments, but when these orders have serious civil consequences of the nature, namely [i] reduction of pay scale, [ii] reduction of emoluments, [iii] consequential effect of reduction of pension and other amount of retirementary benefits, it was obligatory on the part of respondents to follow the principles of natural justice before making the orders impugned. These orders though may be administrative, but they adversely effect the service conditions of the petitioner as well as their pension and other retirementary benefits.

> No reason, good, bad or indifferent has been put forth by respondents as to why the petitioners have not been afforded the opportunity of hearing before passing of such orders which have very drastic results and which causes serious prejudice to the petitioners. So only on this short ground, this Special Civil Application succeeds and the same is allowed and the order dated 19th August, 1997, Annexure-H, 19th August, 1997 Annexure-I and 3rd October, 1997 Annexure-J, are quashed and set aside. It is however made clear that acceptance of this writ petition will not come in the way of respondents to pass appropriate orders in accordance with law after giving notice and opportunity of hearing to the petitioners. Rule is made absolute with no order as to costs."

4. Learned Government Pleader Mr.A.D.Oza appearing for the respondent State Authorities submitted while giving higher grade benefit to the petitioners, some objection has been raised by the respondent No.2 and that higher grade has been wrongly or by mistake has been given to the bailiff and that mistake requires to be rectified. Therefore, he submitted that there is no need to give any reasonable opportunity to the petitioners before rectifying the said mistake committed by the Department. Learned Government Pleader Mr.A.D.Oza has further submitted that the District Courts and Small Causes Court have granted benefit of higher grade in the scale of Rs.4000-6000/- to the bailiff and thereafter, during verification before the respondent No.2, certain queries have been raised by the concerned Court, which has been replied by the respondent No.2 that higher grade which has been given to the Bailiff, is wrongly given and they are not entitled to said benefit of higher grade in the scale of Rs.40000-6000/-. Accordingly, opinion has been given by the respondent No.2 that the higher grade benefit given to the Bailiff in the scale of Rs.4000-6000/- is not legal and valid and such opinion was, accordingly, communicated to the District Courts and Small Causes Court which resulted into withdrawal of higher grade benefit.

5. Learned advocate Mr.J.B.Pardiwala submitted that the respondent No.3 has fixed the higher grade in favour of the Bailiff according to the Government Resolution which requires to be verified by the respondent No.2 and after verification, Local Fund Examiner Office has given an opinion by letter dated 30th January, 2002 that higher

grade which has been given to the Bailiff, is not according to the Government Resolution dated 16th August, 1994 as per the Item No.3[3] and therefore, it required to be rectified by the Department. It is also submitted that the Local Fund Examiner Office has considered that the Bailiff is entitled to promotion in the post of Junior Clerk and therefore, pay scale attached to the post of Junior Clerk is considered to be the higher grade, and that is how, opinion is based, given by the respondent No.2. Therefore, this is only the crux of the matter, on which, ultimately the higher grade which has been granted in favour of the Bailiff, has been withdrawn by the respondents.

6. I have considered submissions made by the learned advocates appearing on behalf of the respective parties. It requires to be noted that one fact is not disputed between the respondents as well as the petitioners that before passing the adverse order of withdrawal of said benefit of higher grade, no reasonable opportunity has been given by any of the respondents to the petitioners. It is also note disputed and cannot be, because withdrawal of the higher grade is also considered to be an adverse order having adverse civil consequences. In such circumstances, reasonable opportunity ought to have been given by the respondent before passing the adverse orders against the petitioners. This aspect has been very well considered by this Court [Coram : Justice S.K.Keshote, J.] in the decision in case of RATILALBHAI NANJIBHAI GAMI VS. STATE OF GUJARAT AND OTHERS reported in 1997 [4] GCD 709, referred to above.

7. However, At this juncture, it is also pertinent to refer the recent decision of the Apex Court on the issue of principle of natural justice in case of CANARA BANK AND OTHERS VS. DEBASIS DAS AND OTHERS reported in 2003 SCC [L& S] 507. The important observations made by the Apex Court in aforesaid decision says as under :

> "Natural justice has been variously defined. It is another name for common sense justice. Rules of natural justice are not codified canons. But they are principles ingrained into the conscience of man. Natural justice is the administration of justice in a common sense liberal way. Justice is based substantially on natural ideals and human values. The administration of justice is to be freed fro the narrow and restricted considerations which are usually associated with a formulated law involving linguistic technicalities and grammatical niceties. It is

the substance of justice which has to determine its form. Principles of natural justice are those rules which have been laid down by the courts as being the minimum protection of the rights of the individual against the arbitrary procedure that may be adopted by a judicial, quasi-judicial and administrative authority while making an order affecting those rights. These rules are intended to prevent such authority from doing injustice."

It is further observed that;

"Notice is the first limb of the principle that no one should be condemned unheard. It must be precise and unambiguous. It should apprise the party determinately of the case he has to meet. Time given for the purpose should be adequate so as to enable him to make his representation. In the absence of a notice of the kind and such reasonable opportunity, the order passed becomes wholly vitiated. Thus, it is but essential that a party should be put on notice of the case before any adverse order is passed aginst him. This is one of the most important principles of natural justice. It is after all an approved rule of fair play. The concept has gained significance and shades with time."

The relevant observations made in para-13 to 16 of the above decision are referred to as under :

"13. Natural justice is another name for common sense justice. Rules of natural justice are not codified conons. But they are principles ingrained into the conscience of man. Natural justice is the administration of justice in a common sense liberal way. Justice is based substantially on natural ideals and human values. The administration of justice is to be freed from the narrow and restricted considerations which are usually associated with a formulated law involving linguistic technicalities and grammatical niceties. It is the substance of justice which has to determine its form.

14. The expression "natural justice" and "legal justice" do not present a watertight classification. It is substance of justice which is to be secured by both, and whenever legal justice fails to achieve this solemn purpose,

natural justice is called in aid of legal justice. Natural justice relieves legal justice from unnecessary technicality, grammatical pendantry or logical prevarication. It supplies the omissions of a formulated law. As Lord Buckmaster said,no form or procedure should ever be permitted to exclude the presentation of a litigant's defence.

15. The adherence to principles of natural justice as recognized by all civilized States is of supreme importance when a quasi judicial body embarks on determining disputes between the parties, or any administrative action involving civil consequence is in issue. These principles are well settled. The first and foremost principles is what is commonly known as audi alterma partem rule. It says that no one should be condemned unheard. Notice is the first limb of this principle. It must be precise and unambiguous. It should apprise the party determinatively of the case he has to meet. Time given for the purpose should be adequate so as to enable him to make his representation. In the absence of a notice of the kind and such reasonable opportunity, the order passed becomes wholly vitiated. Thus, it is but essential that a party should be put on notice of the case before any adverse order is passed against him. This is one of the most important principles of natural justice. It is after all an approved rule of fair play. The concept has gained significance and shades with time. When the historic document was made at Runnymede in 1215, the first statutory recognition of this principle found its way into the "Magna Carta". The classic exposition of Sir Edward Coke of natural justice requires to "vocate, interrogate and adjudicate". In the celebrated case of Cooper v. Wandsworth Board of Works the principle was thus stated : [ER p.420]

"[E]ven God himself did not pass sentence upon Adam before he was called upon to make his defence. "Adam" [says God], "where art thou? Hast thou not eaten of the tree whereof, I commanded thee that thou shouldest not eat ?'"

Since then the principle has been chiselled, honed and refined, enriching its content. Judicial treatment has added light and luminosity

to the concept, like polishing of a diamond.

16. Principles of natural justice are those rules which have been laid down by the courts as being the minimum protection of the rights of the individual against the arbitrary procedure that may be adopted by a judicial, quasi-judicial and administrative authority while making an order affecting those rights. These rules are intended to prevent such authority from doing injustice."

8. In view of above observations made by the Apex Court and this Court, if any orders which required to be passed by the employer against the employee having adverse civil consequences, then, before passing such orders, reasonable opportunity of hearing must have been given to the employee concerned. If any orders which required to be passed by the employer against the employee, the whole concept has been made clear by the Apex Court after considering various decisions of the Apex Court.

9. In above view of the matter and considering the observations made by the Apex Court as well as this Court, so also, the undisputed facts between the parties that though adverse order of withdrawal of higher grade, has been passed by the respondents without giving any reasonable opportunity of hearing to the petitioners before passing such adverse order against the petitioners impugned in this group of petitions, therefore, in my opinion, such action and order impugned in this group of petitions, requires to be quashed and set aside.

Rule is made absolute in all petitions of the group.

In the result, all the petitions of this group are allowed and the impugned order and action of the respondents of withdrawal of higher grade in respect of each petitioner, are hereby quashed and set aside.

10. Therefore, it is directed to the respondents Nos.1 to 3 to reconsider the matter jointly in light of the Government Resolution dated 16th August, 1994 while giving a reasonable opportunity of personal hearing to the petitioners in respect of their grievance for not granting the higher grade in the scale of Rs.4000-6000, through the representatives of Gujarat Judicial Bailiffs Association, Ahmedabad while issuing prior notice of hearing intimating the petitioners the date, time and

venue. It is also made clear that personal hearing is required to be given to the Association by respondents Nos.2 & 3 jointly and they shall hear the association in respect of their grievance and thereafter, on appropriate consultations, the respondent No.2 shall pass appropriate final order in the matter in accordance with law within three months from the date of receiving the copy of this order.

11. This Court has directed the respondents to reconsider the matter with a hope that the real grievance of the petitioners may be put to an end by joint consultations of the respondents in light of the provisions of Rule 19 made in the Recruitment Rules for recruitment to Class III & IV services in Subordinate Judicial Services and the Government Resolution dated 16th August, 1994 and other relevant resolutions. However, it is brought to the notice of this Court the difficulty that a qualified Bailiff is entitled to promotion in the post of Clerk and he will get salary in the cadre of Clerk but a non qualified Bailiff is not entitled to get promotion in the post of Clerk and such Bailiffs remain in the post of Bailiff but then also, such non qualified Bailiffs are entitled to higher grade in higher post in the scale of Rs.4000-6000/- and that creates real difficulty, which requires consideration and determination on the issue at the ends of respondents and if such discrepancy in the policy can be rectified and meet with a solution, the entire grievance in the cadre can be put to an end and no further grievance would survive.

12. The respondents No.2 and 3 shall also consider the question that Bailiffs are entitled to higher grade in the post of Clerk or in the scale of next higher post. Initially, the pay revision scale of Bailiff was fixed at Rs.230-350 and selection grade for 20 % of the posts fixed at Rs.314-400. That said scale revised in scale of Rs.950-1400. At that time, the initial scale for the post of Clerk / Typist was fixed at Rs.260-400 and 20% selection grade of the existing post was fixed at Rs.350-500, which revised to Rs.950-1500. Thereafter, in Pay Rules, 1998 having been effected from 1.1.1996, the scale of Clerk and Typist again revised from Rs.950-1500 to Rs.3050-4590/-. Similarly, the scale of the Bailiff was also revised from Rs.950-1400/- to Rs.3050-4590/-. Considering the Rule 19 of the Recruitment Rules for recruitment to Class-III & IV services in subordinate judicial services, wherein powers conferred on the District Judge who can promote the Bailiff provided the bailiff is properly qualified and fit for promotion to

the post of Clerk. Therefore, the Bailiff requires to satisfy two requirements for getting promotion in the post of Clerk viz. firstly, he should possess the qualification of Clerk and secondly, he must be found to be fit by the District Judge for promotion in the post of Clerk. The respondent No.2 - the Local Found Examiner has relied upon the Promotion Rules and come to the conclusion that because of the fact that Bailiff having promotion in the post of Clerk and therefore, according to the Government Resolution, Bailiff is entitled to higher grade in the scale of Clerk. The difference between the scale of Clerk and Bailiff in Pay Revision Rules, 1987, and as such, no difference in initial scale of Rs.950/- but in maximum the difference is Rs.100/i.e. Rs.1400 and Rs.1500/-, in other words, in initial scale, there was no difference except Rs.100/- at maximum level which has been considered as a promotional post and that is how, the higher grade has been withdrawn. Now in light of this factual aspect, the Pay Revision Rules, 1998, now the scale of Bailiff and Clerk revised at Rs.3050-4590/- and therefore, when the Bailiff and the Clerk having same scale, then where is the question of giving promotion and to operate Rule 19 of Recruitment Rules for recruitment to Class-III and IV services in subordinate judicial services with effect from 1.1.1996. Therefore, after 1.1.1996, the Rule 19 referred to above has become redundant and have no effect because the Clerk and the Bailiff are getting same scale and therefore, what should be next higher grade for the Bailiff cadre. Higher grade cannot be given in the same scale of different post. Therefore, this factor also requires to be considered by the respondent Nos.2 & 3 and to further consider, what would be effect of having same scale for the post of Bailiff and Clerk with effect from 1.1.1996 as per the Pay Revision Rules, 1998. For instance, if any employee who is appointed after 1996, completed nine years, then, which scale can be considered to be higher grade and therefore, this is also an important question, and may creates confusion, complication and discrimination in the same cadre of Bailiff appointed prior to 1996 and subsequently after 1996. Therefore, the respondent Nos.2 & 3 are also directed to reconsider the whole matter in light of the subsequent revision of Pay Rules, 1998 and to consider the fact that in Pay Revision Rules, 1987, there was hardly difference of Rs.100/- in maximum scale i.e. Rs.950-1400 and Rs.950-1500 between the cadre of Bailiff and the Clerk and therefore, the cadre of Clerk was considered to be higher promotion post but as per the Pay Revision Rules, 1996, the pay scales are same and therefore, what should be the next higher grade post. Therefore, this basic

question also requires to be examined thoroughly by the respondents authorities keeping in mind the Government Resolution, Rule 19 referred to above, subsequent Pay Revision of 1998 and in light of the fact whether the post of Clerk as per Rule 19, now, can be said to be a promotional post when only difference of Rs.100/- in maximum scale. This is really an issue requires detailed examination by both the respondent Nos.2 & 3 and after due consultation, the respondent No.2 shall take decision and to pass appropriate orders which will be followed by the respondent No.3.

13. This group of petitions consists of two group. In one group, protection is continued and higher grade is not withdrawn and no recovery has been effected, whereas, in other group, the higher grade has already been withdrawn and to some extent the recovery has been made. But in both these group of petitions, status quo is maintained by the respondents till date. Therefore, it is further directed that the same shall have to maintained further by the respondents till final order will be passed by the respondent No.2 with consultation of respondent No.3 as directed above. It is also made clear that if ultimately any order adverse to the petitioners is passed, then, the same shall not be implemented and effected for a period of six weeks from the date of communication to the petitioners.

It is made clear that this Court has no

Date : 11.12.2003 [H.K.Rathod, J.]

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